

APR 15 1976

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
October Term, 1975

No. ...**75-1496**

CHARLES ROSS CARINO,

Appellant,

—v.—

ELLA T. GRASSO, Governor of the State
of Connecticut,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JURISDICTIONAL STATEMENT

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the United States District Court for Connecticut filed February 27, 1976, holding constitutional Connecticut General Statutes § 54-163 (Rev. 1975) which grants to the Appellee, Governor of the State of Connecticut the power to sign extradition arrest warrants. The District Court judgment also dissolved an order temporarily enjoining the Governor from executing an extradition arrest warrant for the Appellant.

Opinion Below

The opinion delivered in the District Court by Memorandum of Decision dated and filed January 16, 1976 is yet unreported; a copy is appended to this jurisdictional statement.

Jurisdiction

The suit was brought under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) and § 1343(4). Declaratory relief was sought under 28 U.S.C. §§ 2201, 2202 and 2281, *et seq.*, seeking to declare unconstitutional Conn. Gen. Stat. § 54-163 which grants to the Appellee Governor the power to sign extradition arrest warrants. On August 1, 1975 the Chief District Judge of the District of Connecticut, T. Emmet Clarie issued an order temporarily enjoining the Appellee Governor from executing an extradition arrest warrant for the Appellant and ordered the convening of a three-judge court to hear the constitutional challenge. The three-judge District Court dissolved the temporary injunction and found the State statute constitutional. Notice of this appeal was filed with the Clerk, United States District Court, District of Connecticut on March 4, 1976. The jurisdiction of the Supreme Court of the United States to review this case by direct appeal is conferred by 28 U.S.C. § 1253 and § 2101 (B). *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *United States v. United States District Court*, 407 U.S. 297 (1972); *Shadwick v. Tampa*, 407 U.S. 345 (1971).

State Law Involved

This appeal involves the constitutionality of Connecticut General Statutes § 54-163 (Rev. 1975) which is part of the Uniform Criminal Extradition Act. The same statute has been adopted in 46 states and three territories. The Connecticut statute provides as follows:

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant shall substantially recite the facts necessary to the validity of its issuance. *Connecticut General Statutes* § 54-163.

Question Presented

Whether Connecticut General Statutes § 54-163 (Rev. 1975) which authorizes the Governor of the State of Connecticut to sign extradition arrest warrants, violates the Fourth Amendment to the Constitution of the United States for the reason that it authorizes an official who is not a neutral and detached magistrate to sign arrest warrants.

Statement

The Appellant Carino was arrested by East Hartford, Connecticut police on May 29, 1975 and charged with conspiracy to commit burglary in the second degree and interfering with a police officer. While he was being processed, police discovered that Carino was wanted by Bergen County, New Jersey authorities in connection with indictments charging him with bribery, conspiracy, obstructing justice, uttering a forged check and obtaining money under false pretenses. The East Hartford police charged Carino as a fugitive from justice and executed a warrant for his arrest on that charge on June 2, 1975. Carino was arraigned before a State court judge on the same day, refused to waive extradition and was released after posting a \$10,000.00 surety appearance bond.

On June 17, 1975 Carino filed a civil rights action pursuant to 42 U.S.C. § 1983 in United States District Court, Hartford. By way of the action Carino sought the convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284; a declaratory judgment that Connecticut General Statutes § 54-163 (Rev. 1975) is unconstitutional; and interlocutory, preliminary and permanent injunctions restraining the Appellee Governor of Connecticut, her successors, agents, servants and employees from executing a Governor's extradition warrant of arrest for Carino.

Appellant Carino challenged the constitutionality of Conn. Gen. Stat. § 54-163 (Rev. 1975) which is part of Connecticut's codification of the Uniform Criminal Extradition Act. The same statute has been adopted in the forty-six other states and three territories that have adopted the Uniform Act. Carino claimed that the statute was unconstitutional because it authorizes the Governor of Connecticut, who is not a neutral and detached magistrate, to sign arrest warrants. This contended Carino, violated his Fourth Amendment rights under the Constitution of the United States.

On August 1, 1975 United States District Judge T. Emmet Clarie granted Appellant's motion for a preliminary injunction, restraining the Connecticut Governor from signing a warrant for the arrest of Appellant, and ordered a three-judge court convened to hear the constitutional issues raised by Appellant.

On January 16, 1976, the three-judge court convened by Judge Clarie filed its memorandum of decision. The District Court reached the merits of Appellant's complaint and held that Conn. Gen. Stat. § 54-163 (Rev. 1975) did not violate the Fourth Amendment to the Constitution of the United States and invited an appeal to this Court:

* * * The wisest and most economical course is to reach the merits now, and by so doing make immediate review by the Supreme Court available as a matter of right. (Memorandum of Decision at 9).

Substantiality of the Question Presented

I.—ARGUMENT:

The Governor of the State of Connecticut, Like the Executive Officials in *Coolidge v. New Hampshire* and *United States v. United States District Court*, is not a Neutral and Detached Magistrate and Should be Prohibited from Signing Extradition Arrest Warrants.

A. Extradition—In General

The basis for the extradition laws of the several states is Article 4, § 2 of the Constitution of the United States. This section provides that a demanding state which is searching for a fugitive shall act through its Governor in demanding the return of the fugitive. However, Article 4, § 2 is silent as to the identity of the person or institution in the asylum state that the demanding state governor shall make the demand upon for the return of the fugitive.

A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up, to be removed to the state having jurisdiction of the crime. *Constitution of the United States*, Article 4, § 2.

To deal with the problem of whom in the asylum state the demanding state governor is to contact, Congress in 1793 passed what is now 18 U.S.C. § 3182.

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory of which such person has fled shall cause him to be arrested and secured, and notify the executive authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

Using this statute as the basis of authority, 47 States and three territories have adopted the Uniform Criminal Extradition Act, Connecticut being one of the adopting states. Connecticut General Statutes § 54-157, *et seq.* The Act recognizes the duty of the Governor of Connecticut to arrest and deliver up fugitives. Connecticut General Statutes § 54-158. No demand for the extradition of a person will be recognized by the Governor unless it is in writing and alleges that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state. The demand must be accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant issued thereupon or

judgment of conviction or sentence. Connecticut General Statutes § 54-159.

Thereafter, the Governor of this state may sign a warrant of arrest for the accused. Connecticut General Statutes § 54-163. Upon arrest the accused must be taken before a judge who shall inform him of the demand, that he has the right to counsel, and to test the legality of his arrest by filing a writ of habeas corpus. Connecticut General Statutes § 54-166.

The accused may initially be arrested without a warrant, as is the case here, but a Governor's warrant must be served upon him within thirty days. Connecticut General Statutes § 54-171. However, before the warrant is signed the accused must be brought before a judge who may set bond. Connecticut General Statutes § 54-172.

B. The Governor Must Make a Finding of Probable Cause Before She Signs an Extradition Arrest Warrant

The extradition process starts in Connecticut with the issuance of a warrant of arrest for the alleged fugitive by the Governor. Connecticut General Statutes § 54-163 provides as follows:

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant shall substantially recite the facts necessary to the validity of its issuance. Connecticut General Statutes § 54-163.

Before the Governor may sign the warrant she must make a finding that there is probable cause to believe

that the person is a fugitive from justice. *Reynolds v. Conway*, 161 Conn. 329, 288 A.2d 77 (1971); *Glavin v. Warden*, 163 Conn. 394, 311 A.2d 86 (1972). And before the Governor may conclude that the person demanded is a fugitive, she must find probable cause to believe that the person was in the demanding state at the time the crime for which extradition is sought was actually committed. *Stenz v. Sandstrom*, 143 Conn. 72, 118 A.2d 900 (1956). In *Bursque v. Moore*, 26 Conn. Sup. 469, 277 A.2d 255, 257 (1966), a Connecticut court reviewed the probable cause requirement:

With respect to the governor's warrant, the question is whether the governor had jurisdiction to issue the warrant for the plaintiff's arrest. An application to the governor for a warrant of extradition presents the twofold question whether the person demanded has been substantially charged with a crime against the laws of the state where he is wanted and whether he is a fugitive from justice from that state. *Moulthrope v. Matus*, 139 Conn. 272, 275, 93 A. 2d 149, 150 (1952). A governor has no jurisdiction to issue a warrant for the return to a demanding state of a person charged with crime unless there is probable cause that the person is a fugitive from justice * * * [cases cited].

When the demanding state submits affidavits in support of the extradition request, the Governor must examine the documents to determine whether probable cause exists for the arrest. When, as here, the demanding state's charge is based on an indictment, the document embodies a grand jury's judgment that constitutional probable cause exists. However, the Governor still must find probable cause that the person demanded is a fugitive and " * * * the factual finding implicit in the accused state's * * * indictment * * * has been held not conclusive;

prior to placing the accused under extradition arrest, the asylum state executive must make his own confirming determination on the 'fugitivity' question." *Kirkland v. Preston*, 385 F.2d 670, 676 (D.C. Cir. 1967).

Execution of the Governor's warrant carries serious consequences for the person demanded. The first consequence is that he may be held without bail pending the filing and determination of a writ of habeas corpus to test the legality of the arrest. *Winnick v. Reilly*, 100 Conn. 291, 123 A. 440 (1924); Connecticut General Statutes § 54-166.

Although the person demanded has the right to file a writ of habeas corpus to test the legality of arrest, the execution of the warrant is not subject to judicial impeachment unless it *conclusively* appears that the person sought to be extradited could not be a fugitive from justice under the law. *Reynolds v. Conway*, 161 Conn. 329, 288 A.2d 77 (1971). The burden of proof is on the relator to show by clear and convincing evidence that he is not the person sought or that he was not in the demanding state at the time of the commission of the crime. *Harris v. Warden*, 42 A.D. 2d 249 (1st Dept. 1973); *Higley v. Millspaw*, 281 N.Y. 441 (1939).

C. The Governor as Head of the Executive Branch of State Government is not a Neutral and Detached Magistrate

The Fourth Amendment to the Constitution of the United States is plain and unambiguous when it states that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Thus, the Constitution carves out no exception for extradition or governor's warrant. The

language is clear that the requirement of probable cause applies to *all* warrants.

The same standards that are required for the issuance of a search warrant apply to a warrant of arrest, *Giordenello v. United States*, 357 U.S. 480 (1958), and to an arrest warrant on a fugitive or non-fugitive extradition proceeding. *United States ex rel. Grano v. Anderson*, 446 F.2d 272 (3d Cir. 1971). The Court of Appeals for the District of Columbia recognized this principle in *Kirkland v. Preston*, 385 F.2d 670, 676 (D.C. Cir. 1967):

There is no reason why the Fourth Amendment, which governs arrest, should not govern extradition arrests.

This Court in *Shadwick v. Tampa*, 407 U.S. 345 (1971) considered the question of whether municipal court clerks appointed by judges were neutral and detached magistrates for purposes of signing misdemeanor arrest warrants. Holding the practice constitutional, this Court set down the basic criterion for determining whether a particular official is neutral and detached: "Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement." *Id.* at 350.

It was precisely the lack of severance and disengagement from the activities of law enforcement which caused this Court to invalidate a state statute authorizing the Attorney General of New Hampshire to sign search warrants in *Coolidge v. New Hampshire*, *supra*, and the practice of the Attorney General of the United States of approving national security wiretaps without prior judicial approval in *United States v. United States District Court*, *supra*.

In *Coolidge v. New Hampshire*, *supra*, the Defendant was accused of murder. While Coolidge was still a suspect, the Attorney General of New Hampshire, who was actively prosecuting the case signed a warrant to search Coolidge's car in his capacity as a justice of the peace and in accordance with a then existing New Hampshire statute. This Court agreed with Coolidge's contention that the Attorney General was not a "neutral and detached magistrate" because of his relationship to the prosecutorial and law enforcement function.

For the same reason expressed in *Coolidge*, this Court held unconstitutional the practice of the Attorney General of the United States of approving national security wiretaps without prior judicial approval. Mr. Justice Powell, speaking for a unanimous Court, wrote the following:

The Fourth Amendment does not contemplate the *executive officers of Government as neutral and disinterested magistrates. Their duty and responsibility is to enforce the laws, to investigate and to prosecute* * * * But those charged with this investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks * * * The Fourth Amendment contemplates a prior judicial judgment, *not the risk that executive discretion may be reasonably exercised*. This judicial role accords with our basic constitutional doctrine that individual freedoms will best be preserved through a *separation of powers and divisions of functions among the different branches and levels of Government*. *Id.* at 317 [emphasis supplied]; also see *Almeida Sanchez v. United States*, 413 U.S. 266 (1973) (concurring opinion of Mr. Justice Powell).

The Appellee, Ella T. Grasso, as chief executive officer of the State of Connecticut, is not a neutral and detached

magistrate because her duties require her to work closely with police and prosecutors. For example, upon the application of a State's Attorney, she has the power to post rewards for the apprehension of criminals. Conn. Gen. Stat. § 54-160 (Rev. 1975). The Governor appoints the State Police Commissioner who serves at her pleasure. Conn. Gen. Stat. § 29-2 (Rev. 1975). The Governor also appoints the Commissioner of Corrections, the Board of Parole and Board of Pardons. Conn. Gen. Stat. §§ 18-80, 54-124a, 18-24a (Rev. 1975). The Governor's duties also require her to submit legislation dealing with the criminal code and criminal procedure. Her relationship with law enforcement is best illustrated by another provision of the Uniform Criminal Extradition Act, Conn. Gen. Stat. § 54-160 (Rev. 1975). That statute authorizes the Governor to call upon any State's Attorney to assist her in investigating an extradition demand.

CONCLUSION

For the reasons stated above jurisdiction should be taken over this appeal and the filing of briefs and the scheduling of oral argument should be ordered.

Respectfully submitted,

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APPENDIX

A.—Memorandum of Decision

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. H-75-202

WILLIAM P. DEGENNA & CHARLES ROSS CARINO

—VS—

ELLA T. GRASSO

Before: MESKILL, Circuit Judge, CLARIE and
ZAMPANO, District Judges.

MEMORANDUM OF DECISION

CLARIE, *District Judge*

The plaintiff, Carino,¹ challenges the constitutionality of Conn. Gen. Stat. § 54-163 (Rev. 1975), which is part of Connecticut's codification of the Uniform Criminal Extradition Act. He claims that his fourth amendment

¹Originally William P. DeGenna, an alleged fugitive from justice from the State of North Carolina, was also a plaintiff. At oral argument, however, the Court was informed that DeGenna is incarcerated in the State of New York and that Connecticut authorities have no intention of seeking his return to this state. On December 22, 1975, the fugitive from justice charge pending against DeGenna was nolleed by the Court of Common Pleas in East Hartford. Counsel for the Governor of Connecticut has informed the Court that the State of North Carolina is in the process of withdrawing its demand for the extradition of DeGenna from Connecticut. The action brought by DeGenna is therefore moot.

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rights will be violated if the Governor of Connecticut, pursuant to § 54-163, signs a warrant authorizing his arrest and ultimate extradition to New Jersey on criminal charges. The plaintiff contends that the Governor, not being a "neutral and detached magistrate," may not constitutionally issue such an arrest warrant. The Court finds this argument to be without merit, and holds that it is constitutionally permissible for a governor to issue a governor's arrest warrant to accomplish the unique purposes of an extradition demand made by the chief executive of another sovereign state.

Facts

Carino was arrested by the East Hartford police on May 29, 1975 on two charges, conspiracy to commit burglary in the second degree and interfering with a police officer. When originally arrested, he used the alias "Henry H. Decker," but his true identity was shortly established. On May 30, 1975, the East Hartford Police Department received a teletype message from the Bergen County, New Jersey Sheriff's Office that Carino was wanted in New Jersey on charges of bribery, conspiracy, obstructing justice, uttering a forged check, and obtaining money under false pretenses. After learning that New Jersey State Police officers were en route to East Hartford with warrants for Carino's arrest, the East Hartford police requested the issuance of an arrest warrant charging Carino with being a fugitive from justice in violation of Conn. Gen. Stat. § 54-158. The warrant was executed by a judge of the Court of Common Pleas on June 2, 1975, and Carino was rearrested under the new warrant that same day. He refused to waive extradition, and was released after posting a \$10,000 surety appearance bond.

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Carino filed the present civil rights action on June 17, 1975, seeking the convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284; a declaratory judgment that Conn. Gen. Stat. § 54-163 is unconstitutional; and interlocutory, preliminary and permanent injunctions restraining the Governor of Connecticut, her successors, agents, servants and employees from executing a Governor's warrant for Carino's arrest. On July 10, 1975, the New Jersey Governor formally requested of the Governor of Connecticut that Carino be apprehended and delivered forthwith to New Jersey authorities. This request was accompanied by certified copies of an indictment and supporting papers as required by 18 U.S.C. § 3182, and receipt thereof was acknowledged on July 15, 1975 by the Connecticut Governor.

On August 1, 1975, United States District Judge T. Emmet Clarie denied the defendant's motion to dismiss, granted the plaintiff's motion for a preliminary injunction restraining the Connecticut Governor from signing a warrant for the arrest of the plaintiff, and ordered a three-judge court be convened to hear the constitutional issues raised by the plaintiff. A hearing on the merits was conducted on December 15, 1975.

Discussion of the Law

The Uniform Criminal Extradition Act has been adopted by Connecticut, forty-six other states, and three territories. It signifies Connecticut's willingness and determination to cooperate with the other states pursuant to their obligation under the federal Constitution to extradite persons charged with crimes in other states. The Fourth Article, § 2(2) of the United States Constitution provides:

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"A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

The uniform extradition act itself, as adopted by the states, was designed to conform to and supplement the federal statute, 18 U.S.C. § 3182, so as to implement the aforesaid constitutional provision. § 3182 provides:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

In Connecticut, the Uniform Criminal Extradition Act is codified as Conn. Gen. Stat. § 54-157 *et seq.* Among other things, the Connecticut version of the act, § 54-158,

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imposes a "duty" on the Governor to effect the arrest of a fugitive and deliver him up to the executive authority of the demanding state. It establishes formal requirements for the Governor's recognition of an extradition demand, which must be in writing, accompanied by a copy of an indictment, information, affidavit or judgment of conviction or sentence, charging the person demanded with having committed a crime under the law of the demanding state. It requires authentication by the executive authority of the demanding state, § 54-159, and provides that the Governor may call upon the State's Attorneys in Connecticut to investigate such demand and report on the "situation and circumstances" concerning the person demanded, and whether he ought to be surrendered, § 54-160.

The specific section of the act which is challenged here is identical with § 7 of the Uniform Criminal Extradition Act, and reads as follows:

"If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant shall substantially recite the facts necessary to the validity of its issuance." Conn. Gen. Stat. § 54-163.

Connecticut law provides that before a person arrested on said warrant may be delivered over to the agent of the demanding state, he must be presented before a judge of a state court of competent jurisdiction, who shall inform him of the demand made for his surrender and of the crime with which he is charged; furthermore, at that time, he has the right to demand and be represented

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by legal counsel. The law affords the prisoner the full right and opportunity to apply for a writ of habeas corpus before an impartial judicial authority "to test the legality of his arrest" under the Governor's warrant. § 54-166.

Abstention

The Court will consider the case on its merits, notwithstanding the defendant's arguments that the Court should abstain from deciding the case based upon principles of comity and federalism. *Younger v. Harris*, 401 U.S. 37 (1971); *Huffman v. Persue, Ltd.*, 420 U.S. 592 (1975); *Hicks v. Miranda*, 422 U.S. 332 (1975); *Doran v. Salem Inn, Inc.*, No. 74-337, 43 U.S.L.W. 5039 (U.S. Sup. Ct. June 30, 1975). Although such a call for abstention would almost certainly be heeded if the case involved some form of state criminal proceeding in the Connecticut courts, the uniquely federal character of the extradition process eliminates from this case most of the policy justifications for the *Younger* doctrine of equitable restraint.

"The rule in *Younger v. Harris* is designed to 'permit state courts to try state cases free from interference by federal courts,' 401 U.S., at 43, particularly where the party to the federal case may fully litigate his claim before the state court." *Hicks v. Miranda*, *supra*, 422 U.S. at 349.

Extradition demands pending before the defendant Governor are not truly "state cases" involving the criminal laws of Connecticut, in which the state's interest would be protected by the *Younger* doctrine. The obligation of a state to extradite an accused person on demand of another state has its source in the federal

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Constitution, and is regulated by federal legislation, U.S. Const. Art. 4, § 2(a); 18 U.S.C. § 3182.

In its seminal pronouncement on the subject of extradition, *Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 109 (1860), the Supreme Court described a state's duty to extradite accused persons, as stemming from a "compact entered into with the other States when it adopted the Constitution of the United States, and became a member of the Union." That compact, the Court made clear, makes extradition a matter of overriding federal interest and control:

"This duty of providing by law the regulations necessary to carry this compact into execution, from the nature of the duty and the object in view, was manifestly devolved upon Congress; for if it was left to the States, each State might require different proof to authenticate the judicial proceeding upon which the demand was founded. . . ." 65 U.S. at 104.

The Constitution also places interstate compacts squarely in the federal domain, providing in Article 1, § 10(3) that "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State. . . ." Congress has exercised its authority by giving blanket approval to such compacts which are "for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies. . . ." U.S.C. § 112.

Unlike the states' ultimate authority to construe their own laws, it is their duty to administer extradition in

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accord with the construction placed on the federal constitutional and statutory provisions by the Supreme Court. *South Carolina v. Bailey*, 289 U.S. 412, 420 (1933); *Taft v. Lord*, 92 Conn. 539, 543 (1918). The paramount interests underlying the extradition process are matters of federal, rather than merely local, concern.

“[E]very State [has] an equal interest in the execution of a compact absolutely essential to their peace and well being. . . .” *Kentucky v. Dennison*, *supra*, 65 U.S. at 109.

To abstain from acting on the merits of this case in deference to the courts of Connecticut, despite the fact that the legal issue is one of federal law which is not “entangled in a web of state law,” *McNeese v. Board of Education*, 373 U.S. 668, 674 (1963), would amount to a “wooden application” of the *Younger* doctrine. Cf. *Eisen v. Eastman*, 421 F.2d 560, 569 (2d Cir. 1969). This is especially true in light of the considerable delay which this litigation has already injected into the extradition process.

“The scheme of interstate rendition, as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him. . . .” *Sweeney v. Woodall*, 344 U.S. 86, 89-90 (1952) (footnotes omitted).

See also, *Davis v. Behagen*, 321 F. Supp. 1216, 1217 (S.D.N.Y. 1970), *aff’d*, 436 F.2d 596 (2d Cir. 1970), *cert. denied*, 403 U.S. 911. The wisest and most economical course is to reach the merits now, and by so doing

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make immediate review by the Supreme Court available as a matter of right.²

Plaintiff's Constitutional Claim

The plaintiff's constitutional claim is that the Governor of Connecticut is not a “neutral and detached magistrate,” and thus may not issue a warrant for his arrest because the Supreme Court has adopted “a *per se* rule” that warrants may not be executed by officers of the executive branch of government. Plaintiff relies principally on *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) and *United States v. United States District Court*, 407 U.S. 297 (1972), to demonstrate the claimed constitutional violation. Even if these cases could be construed to create such a “*per se* rule” for the issuance of search and wiretap warrants, it would be inapplicable to the radically different process of extradition.

The plaintiff Carino was indicted by a grand jury in New Jersey, which found probable cause that he com-

² For similar reasons, the Court will not require the plaintiff to exhaust his state habeas corpus remedies. Plaintiff's counsel has attempted to show that Connecticut law does not permit a person on bail to file a habeas corpus petition, and that habeas corpus proceedings pursuant to § 54-166 after arrest on a Governor's warrant are so limited that constitutional challenges cannot be raised therein. He argues, therefore, that the plaintiff has no present state remedy available, and that the one that would arise after issuance of the Governor's warrant could not take the place of the federal action.

While the authorities cited by plaintiff's counsel fail to firmly establish his claims of Connecticut law, they demonstrate that Connecticut law on these points remains undeveloped. Requiring exhaustion under such circumstances would only risk extensive delay in resolving plaintiff's constitutional claims, and in effecting his extradition to New Jersey.

A.—Memorandum of Decision

mitted a number of serious crimes. Upon receipt of the extradition demand, the Governor of Connecticut cannot make a new assessment of the evidence against Carino and reach an independent finding concerning probable cause. If the papers submitted with the extradition demand comply with 18 U.S.C. § 3182, then the Governor has a constitutional duty to execute the warrant.

"It will be observed, that the judicial acts which are necessary to authorize the demand are plainly specified in the act of Congress; and *the certificate of the Executive authority is made conclusive as to their verity when presented to the Executive authority of the State where the fugitive is found. He has no right to look behind them, or to question them, or to look into the character of the crime specified in this judicial proceeding.* The duty which he is to perform is, as we have already said, *merely ministerial*—that is, to cause the party to be arrested, and delivered to the agent or authority of the State where the crime was committed. It is said in the argument, that the Executive officer upon whom this demand is made must have a discretionary executive power, because he must inquire and decide who is the person demanded. But this certainly is not a discretionary duty—that is, to do the act required to be done by him, and such as every marshall and sheriff must perform when process, either criminal or civil, is placed in his hands to be served on the person named in it. And it never has been supposed that this duty involved any discretionary power, or made him anything more than a mere ministerial officer; and such is the position and character of the Executive of the

A.—Memorandum of Decision

State under this law, when the demand is made upon him and the requisite evidence produced. *The Governor has only to issue his warrant to an agent or officer to arrest the party named in the demand.*" *Kentucky v. Dennison*, *supra*, 65 U.S. at 106-107. (Emphasis added).

The plaintiff argues that the Supreme Court's determination in *Kentucky v. Dennison* that the Governor's function in extradition is "merely ministerial" would be erroneous today, because enactment of the Uniform Criminal Extradition Act has "changed radically" the Governor's role. To support this point, plaintiff cites *Stenz v. Sandstrom*, 143 Conn. 72, 75 (1955), which states that the Governor's warrant must be based on probable cause that the person charged is a fugitive from justice. That case can hardly show any radical change wrought by the uniform act, however, since it was decided two years before Connecticut adopted that statutory scheme in Conn. Pub. Acts (1957) No. 362. The principle referred to in *Stenz* is an old one, and is explained in *Munsey v. Clough*, 196 U.S. 364, 372 (1905):

"The proceedings in matters of this kind before the governor are summary in their nature. The questions before the governor, under [the predecessor of 18 U.S.C. § 3182] are whether the person demanded has been substantially charged with a crime, and whether he is a fugitive from justice. The first is a question of law and the latter is a question of fact, which the governor, upon whom the demand is made, must decide upon such evidence as is satisfactory to him. . . . The issuing of a warrant by him, with or without a recital therein that the person demanded is a fugitive from justice, must be regarded as suffi-

A.—Memorandum of Decision

cient to justify the removal, until the presumption in favor of the legality and regularity of the warrant is overthrown by contrary proof in a legal proceeding to review the action of the governor. . . .”

The governor “is not obliged to demand proof apart from the proper requisition papers from the demanding state, that the accused is a fugitive from justice.” *McNichols v. Pease*, 207 U.S. 100, 109 (1907).

If a governor issues a warrant without any basis whatsoever for finding that the person demanded is a fugitive from justice, habeas corpus is the proper remedy:

“When it is conceded, or when it is so conclusively proved, that no question can be made that the person was not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding State, then the court will discharge the defendant. *Hyatt v. Cockran*, 188 U.S. 691, affirming the judgment of the New York Court of Appeals, 172 N.Y. 176. But this court will not discharge a defendant arrested under the governor’s warrant where there is merely contradictory evidence on the subject of the presence in or absence from the State, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused.” *Munsey v. Clough*, *supra*, 196 U.S. at 374-375.

Where the extradition demand is in order, the governor of the asylum state must issue the warrant, *Kentucky v. Dennison*, *supra*; but if he issues the war-

A.—Memorandum of Decision

rant erroneously, because the demand is deficient in that it fails to show that the person demanded is a fugitive, then the warrant can be defeated by writ of habeas corpus. *Munsey v. Clough*, *supra*; *McNichols v. Pease*, *supra*, 207 U.S. at 108-109. This was the law before the adoption of the uniform act, and it is still the law now. The procedure does not alter the essentially ministerial nature of the governor’s function in extradition. We hold that Conn. Gen. Stat. § 54-163 is constitutionally sound.

The foregoing opinion shall constitute the findings of fact and conclusions of law required to be filed by the Court, pursuant to Rule 52(a), Fed. R. Civ. P. SO ORDERED.

Dated at Hartford, Connecticut, this 16th day of January, 1976.

THOMAS J. MESKILL
United States Circuit Judge

T. EMMET CLARIE
Chief United States District Judge

ROBERT C. ZAMPANO
United States District Judge

B.—Judgment

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil Action No. H75-202

 WILLIAM P. DEGENNA & CHARLES ROSS CARINO,

—vs.—

 ELLA T. GRASSO.
JUDGMENT

This case came on for hearing before a three-judge District Court, the Honorable Thomas J. Meskill, United States Circuit Judge, and the Honorables T. Emmet Clarie and Robert C. Zampano, United States District Judges, presiding, and this cause having been fully heard and a decision having been rendered in favor of the Defendant, holding that Connecticut General Statute § 54-163 is constitutionally sound;

It is accordingly hereby ORDERED and ADJUDGED that Judgment enter and hereby does, for the Defendant, and the Plaintiff's Complaint be and hereby is denied and dismissed.

Dated at Hartford, Connecticut, this 27th day of February, 1976.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By:
Deputy-in-Charge

C.—Notice of Appeal

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

Civil Action No. H-75-202

 WILLIAM P. DEGENNA & CHARLES ROSS CARINO,
Plaintiffs,

—v.—

 ELLA T. GRASSO, Governor of the State of Connecticut,
Individually and in her official capacity,
Defendants.

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

Notice is hereby given that Charles Ross Carino, the Plaintiff above-named, hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court, District of Connecticut, sitting as a three-judge court, dated and entered in this action on January 16, 1976 which

(1) denied Plaintiff's request for injunctive and declaratory relief in connection with his claim that Connecticut General Statutes Section 54-163 (Rev. 1975) authorizing the Defendant Governor to sign extradition arrest warrants violated the Fourth Amendment to the Constitution of the United States and was therefore unconstitutional;

(2) vacated an order by Chief District Judge T. Emmet Clarie preliminarily enjoining the Defendant

C.—Notice of Appeal

Governor from signing an extradition warrant of arrest for the Plaintiff.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Filed this 27th day of January, 1976 with the Clerk, United States District Court, District of Connecticut, at the United States Court House, 450 Main Street, Hartford, Connecticut.

HUBERT J. SANTOS
51 Russ Street
Hartford, Conn. 06106

PROOF OF SERVICE

I, HUBERT J. SANTOS, a member of the Bar of the Supreme Court of the United States and counsel of record for Charles Ross Carino, Appellant herein, hereby certify that on January 27, 1976, pursuant to Rule 33, Rules of the Supreme Court, served three (3) copies of the foregoing Notice of Appeal on:

The Hon. Ella T. Grasso, Governor of the State of Connecticut, State Capitol, Hartford, Connecticut and upon her counsel, John F. Mulcahy, Jr., Deputy Chief States Attorney and Robert E. Beach, Jr., Asst. Prosecuting Attorney, Drawer H, Amity Station, New Haven, Connecticut this 27th day of January by depositing such copies in the United States Post Office of Hartford, Connecticut with first-class postage prepaid, properly addressed to the post office address of the above-named Ella T. Grasso, John F. Mulcahy and Robert E. Beach.

And to William P. DeGenna, Plaintiff in the above action, Suffolk County Jail, Riverhead, New York 11901

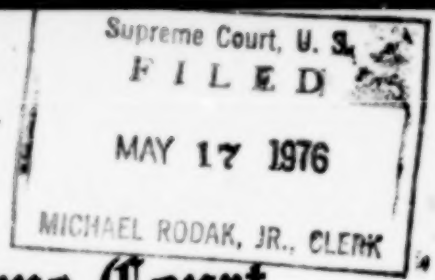
C.—Notice of Appeal

this 27th day of January by depositing such copies in the United States Post Office of Hartford, Connecticut with first class postage prepaid, properly addressed to the post office address of the above-named William P. DeGenna.

All parties required to be served have been served.

Dated at Hartford, Connecticut this 27th day of January, 1976.

HUBERT J. SANTOS
51 Russ Street
Hartford, Conn. 06106



IN THE

United States Supreme Court

OCTOBER TERM, 1975

No. 75- **1 496**

CHARLES ROSS CARINO,

Appellant

vs.

ELLA T. GRASSO, GOVERNOR OF THE
STATE OF CONNECTICUT,

Appellee

MOTION TO AFFIRM

Robert E. Beach, Jr.
Assistant State's Attorney
Office of the Chief State's Attorney
Drawer H, Amity Station
New Haven, Connecticut 06525
Counsel for Appellee

TABLE OF AUTHORITY

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<i>Shadwick v. Tampa</i> , 407 U.S. 345 (1971)	2
<i>State ex rel Wiley v. Waggoner</i> , 508 S.W.2d 535 (Tenn. 1973)	1
<i>United States v. United States District Court</i> , 407 U.S. 297 (1972)	1

Pursuant to Rule 16 (1) (c) of the Supreme Court Rules, the appellee Governor Grasso moves this Court to affirm the judgement of the three-judge court entered in this case. The appellee urges that the question involved is so insubstantial as not to require extensive argument.

The appellee agrees with the facts and proceedings below as reported in the appellant's jurisdictional statement. The sole issue is whether the governor may constitutionally sign extradition warrants pursuant to §54-163 of the Connecticut General Statutes. The appellant maintains that such power violates at least the spirit of the Fourth Amendment, because the governor is not a neutral and detached magistrate; he relies principally on *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) and *United States v. United States District Court*, 407 U.S. 297 (1972). The appellee argued, and the three-judge District Court apparently agreed, that those cases were not applicable because they were not concerned with the peculiarly distinctive process of extradition.

The three-judge court held that extradition was mandated by an independent clause of the United States Constitution, Art. IV §2(2). This section specifically states that the demand is to be made by the executive authority of the state from which the subject fled. While the Constitution itself is silent as to on whom the demand is to be made, common sense indicates that it would be made on the comparable executive authority, especially in light of the treaty-like nature of extradition. In 1793, Congress passed the predecessor of 18 U.S.C. §3182 in order to implement the constitutional provision; here, it was specifically provided that the demand was to be made upon the executive authority of the asylum state. This Court has consistently emphasized that in issuing an extradition warrant, a governor is exercising a ministerial duty mandated by the extradition treaty. *Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 106-07 (1860); *Roberts v. Reilly*, 116 U.S. 80, 94 (1885); *Appleyard v. Massachusetts*, 203 U.S. 222, 227 (1906); see also *Biddinger v. Commissioner of Police*, 245 U.S. 128, 132-35 (1917); *State ex rel. Wiley v. Waggoner*, 508 S.W. 2d 535 (Tenn. 1973). The Founding Fathers determined that extradition was in furtherance of a treaty to be executed by the governor, and their judgment has not yet been disturbed.

CERTIFICATION

This is to certify that on ~~April~~ ^{MAY 14}, 1976, three copies of the foregoing was mailed to Hubert J. Santos, Esq., 51 Russ Street, Hartford, Connecticut 06106.

Robert E. Beach, Jr.

The relationship between extradition and the Fourth Amendment is not intricate. The Fourth Amendment states only, for purposes relevant here, that "no warrants shall issue, but upon probable cause. . . ." The federal extradition statute, 18 U.S.C. §3182, includes just such a requirement. There is no constitutional requirement that such probable cause be found by a judicial official; see *Shadwick v. Tampa*, 407 U.S. 345 (1971); probable cause must be found, however, by an unbiased official detached from the actual investigation. *Coolidge v. New Hampshire*, supra.

The crucial distinction between arrest or search warrants and extradition warrants is that the latter may not issue unless probable cause in the traditional sense has already been found by a neutral and detached magistrate in the demanding state. 18 U.S.C. §3182. Further, immediate judicial review of the governor's action is available by means of habeas corpus. See §54-166 of the Connecticut General Statutes; see also *Munsey v. Clough*, 196 U.S. 364, 372, 374-75 (1905); *McNichols v. Pease*, 207 U.S. 100, 109 (1907).

In conclusion, the appellee respectfully urges that neither the Fourth Amendment nor the due process requirement of the Fifth Amendment is threatened by the continued application of §54-163 of the Connecticut General Statutes and requests that the decision of the court below be summarily affirmed.

Respectfully submitted,

HONORABLE ELLA T. GRASSO

By _____
Robert E. Beach, Jr.
Assistant State's Attorney
Drawer H, Amity Station
New Haven, Connecticut 06525